



## Review of Chapter 510, Holiday Shopping- Next Steps

Date: March 31, 2017

To: Licensing and Standards Committee

From: Executive Director, Municipal Licensing and Standards and General Manager,  
Economic Development and Culture

Wards: All

### SUMMARY

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Upon the enactment of the *City of Toronto Act* ("COTA"), the City was given the authority to enact its own Holiday Shopping By-law, as the provincial *Retail Business Holidays Act* ("RBHA") would no longer apply to the City. On December 6, 2006 the City enacted a Holiday Shopping By-law, Chapter 510. The new By-law copied the same regulations found in the *RBHA*.

On September 30, 2015, the City Solicitor submitted a report to Council on a court ruling dealing with the City's Holiday Shopping By-law. The City had been unsuccessful in a prosecution of Longo Brothers Fruit Markets Inc. (Longo's), under Toronto Municipal Code, Chapter 510, Holiday Shopping for operating two locations on a public holiday. The City appealed that decision, however, the court once again found in Longo's favour. In both trials, Longo's successfully argued to the court that they met the exemption provided in the By-law for premises "selling goods or services in the form of, or in connection with, prepared meals". The City had historically taken the position that this exemption applied solely to restaurants.

The court decision noted the ambiguity in the prepared meals exemption as no definition exists of prepared meals in either the *RBHA* or *COTA*. Furthermore, section 97 of the *COTA*, prevents the City from regulating operating hours, including closing times, of business establishments involved in "the selling or provision of goods or services in the form of, or in connection with, prepared meals".

The changing nature of business practices in retail over time is now challenging the previously accepted convention of types of businesses that meet the prepared meals exemption. This is seen with the expansion of multi-purpose grocery stores such as Longo's, with extensive prepared meals for sale alongside other more traditional grocery store items. Further, some pharmacies are now moving towards a similar model and providing food and groceries for sale. This is presenting new challenges on how to apply the exemption.

In order to address the concerns raised in the Longo's court ruling and respond to the changing business practices of retailers, this report proposes that staff undertake a review, including public consultations on the impact of expanding the application of the prepared meals exemption in the Holiday Shopping By-law beyond restaurants so as to permit other retailers such as grocery stores who sell prepared meals to operate on public holidays. As part of the consultation, staff will seek input on the application of the prepared meals exemption for grocery stores (e.g. operating hours, partial closure, number of employees, etc.). Staff will report back on the outcomes of the consultations by October 2017.

In the process of reviewing the outcomes of the Longo's court case, staff became aware that other exemptions may also benefit from a formal review. This report also seeks direction from City Council to undertake a review, including public consultations, on the remaining existing exemptions and additional exemptions requested by stakeholders, including:

- Reviewing the existing exemptions to the Holiday Shopping By-law, such as those for small retail business establishments and pharmacies, to ensure clarity and relevance.
- Reviewing the tourist area exemption to permit Business Improvement Areas and major malls to operate on public holidays.
- Developing an application process for retailers to request exemptions from the Holiday Shopping By-law.

This report includes the results of input from meetings with retail industry, labour, Business Improvement Areas (BIAs), and small businesses. The stakeholder input was received from May 2016 to January 2017.

Legal Services was consulted in the preparation of this report.

## **RECOMMENDATIONS**

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The Executive Director, Municipal Licensing and Standards and the General Manager of Economic Development and Culture recommend that:

1. City Council direct the Executive Director, Municipal Licensing and Standards and the General Manager of Economic Development and Culture to conduct public consultations on the impact of expanding the application of the prepared meals exemption in the Holiday Shopping By-law to beyond restaurants to permit other retailers who serve prepared meals to operate on public holidays.
2. City Council direct the Executive Director, Municipal Licensing and Standards and the General Manager of Economic Development and Culture to conduct public consultation on each of the following:
  - A. To review the remaining exemptions in Chapter 510 to ensure clarity and relevance (i.e. small retail business establishments and pharmacies).
  - B. To review the tourist area exemptions in Chapter 510 to permit Business Improvement Areas and major malls to operate on public holidays.

- C. To develop an application process for retailers to request an exemption from Chapter 510 to operate on public holidays.
3. City Council direct the Executive Director, Municipal Licensing and Standards and the General Manager of Economic Development and Culture to report back to City Council with review and consultation findings by October 2017.

## **FINANCIAL IMPACT**

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There are no financial impacts beyond what has already been approved in the current year's budget.

The Deputy City Manager & Chief Financial Officer has reviewed this report and agrees with the financial impact information.

## **DECISION HISTORY**

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At its meeting of September 30, 2015, City Council directed the Executive Director, Municipal Licensing and Standards to conduct a review of Chapter 510, Holiday Shopping and report back to Licensing and Standards Committee on options available to address the concerns raised in the court ruling.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.CC9.5>

At its meeting of November 27, 2012, the General Manager, Economic Development and Culture reported to City Council proposed recommendations to the By-law following extensive consultation on Chapter 510, Holiday Shopping. This report was received for information.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.ED18.6>

At its meeting of May 11, 2010, City Council considered a report by the General Manager, Economic Development and Culture that proposed recommendations relating to the operation of retail stores on Public Holidays. City Council referred this item for further consultation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.ED29.4>

At its meeting of March 3, 2008, the General Manager, Economic Development and Culture reported to City Council on proposed regulations for Holiday Shopping. This report was received for information.

<http://www.toronto.ca/legdocs/mmis/2008/cc/decisions/2008-03-03-cc17-dd.pdf>

At its meeting of December 6, 2006, City Council passed By-law 8-2007 (now Chapter 510 of the City of Toronto Municipal Code) under the authority of the City of Toronto Act, 2006, S.O. 2006, c. 11.

[http://www.toronto.ca/legdocs/municode/1184\\_510.pdf](http://www.toronto.ca/legdocs/municode/1184_510.pdf)

Staff report dated November 24, 2006 advised that the upcoming proclamation of the *City of Toronto Act* would result in the *Retail Business Holidays Act* no longer applying to Toronto. The report recommended that Council adopt a By-law to maintain the status quo pending a consultative review and report back to the Economic Development Committee on a new regulatory framework governing holiday shopping.

<http://www.toronto.ca/legdocs/2007/cc/bgrrd/20061205-cc1.3.pdf>

## COMMENTS

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### Chapter 510, Holiday Shopping

Prior to 2006, the *Retail Business Holidays Act (RBHA)*, a provincial legislation, regulated holiday shopping in Toronto. Through the enactment of the *City of Toronto Act ("COTA")*, the City was given the authority to enact its own Holiday Shopping By-law. On December 6, 2006, the City enacted a Holiday Shopping By-law, Chapter 510. The new By-law copied the regulations found in the *RBHA*.

Under Municipal Code Chapter 510, Holiday Shopping, retail stores that do not meet the exemption criteria are required to be closed on the following nine public holidays that have been declared by the Lieutenant Governor of Ontario: New Year's Day, Family Day, Good Friday, Easter Sunday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, and Christmas Day.

Currently, exemptions for retail businesses to open on the above noted holidays is based on type of store and/or services offered, restrictions on the size of the store and the number of employees, and includes retail establishments selling "goods or services in the form of or in connection with prepared meals". Restaurants have always been exempted from the Holiday Shopping By-law through this "prepared meals" exemption in line with the authority under the *COTA*.

Other exempted premises include retail businesses with less than 2,400 square feet and no more than three persons serving the public, selling tobacco, foodstuff or fresh fruit, magazines, books, antiques or art, are permitted to open. Laundromats, nurseries, gas stations, and businesses that repair boats or vehicles are also permitted to open. Businesses licensed under the *Liquor Licence Act* may also open, as well as pharmacies less than 7,500 square feet and accredited under the *Drug and Pharmacies Regulation Act*.

Exemptions provided prior to 2006 under the *RBHA* have been included in the Holiday Shopping By-law. These exemptions were granted for businesses that are within a defined area and meet tourism criteria and include; Queens Quay West, Toronto Eaton Centre and the Hudson's Bay, Downtown Yonge Street Business Improvement Area, Bloor-Yorkville Business Improvement Area, and Distillery Historic District.

### Longo's Court Case Background & Decision

The City Solicitor prepared a report for Council at its meeting on September 30, 2015 headed "*Recent Court Decision Dealing with the City's Holiday Shopping By-law*". The

report outlined a recent appeal decision of the Ontario Court of Justice regarding the exemption provisions found in the Municipal Code, Chapter 510, Holiday Shopping. The City lost an appeal of the trial judge's ruling, dismissing charges against Longo's.

On September 2, 2013, Longo's was charged with two counts of offering goods or services for sale on a holiday. It was charged under the Municipal Code, Chapter 510, s. 2.

Longo's did not dispute before the court that two of their locations were retail establishments open on Labour Day, a designated holiday. It argued that the establishments were permitted to remain open for business on a designated holiday because they satisfied the exemption provided in the By-law for premises "selling goods or services in the form of or in connection with prepared meals".

The evidence of the case established that several hundred prepared meals options were available for sale (such as sushi, pizza, salad bar, sandwiches, ready-to-serve meat, seafood, and one location had a full-service restaurant). However, evidence also indicated that non-food items were made available for sale, such as lottery tickets, magazines, flowers, detergent, and light bulbs.

The Justice of the Peace interpreted the meaning of the exemption for premises selling "goods or services in the form of or in connection with ... prepared meals" contained in section 4. In doing so, the court concluded that the exemption extended to a range of establishments that offer prepared meals and "connected goods or services".

The City appealed the decision to the Ontario Court of Justice and argued that the court should give a broad and purposive interpretation, consistent with the purpose of the By-law. Further, the City argued that to interpret the exemption too broadly is to override the exemption in the first place. The court dismissed the City's appeal citing the ambiguity in the exemption.

### **City of Toronto Act and "Prepared Meals" Exemption**

Section 97 of the *COTA*, prevents the City from regulating the operating hours, including the closing times, of business establishments involved in the selling or provision of "goods or services in the form of or in connection with prepared meals or living accommodations". This exemption historically had the effect of allowing restaurants and hotels to operate on public holidays.

No definition of "prepared meals" exists in the *COTA* or the *RBHA*. Changing business practices in retail over time are now challenging the accepted convention of what businesses meet the prepared meals exemption. As we see with the expansion of multi-purpose grocery stores such as Longo's with extensive prepared meals for sale alongside other more traditional grocery store items. Further, pharmacies are now moving towards a similar model and providing items that could be considered prepared meals. This is presenting enforcement challenges on how to best ascertain what retailers qualify for the prepared meals exemption.

## Regulatory Approaches in Other Jurisdictions

Staff conducted research into other jurisdictions on the question of "prepared meals" exemption and found that holiday shopping in Canada is regulated by provincial and territorial governments. Regulations vary across the country, with no restrictions on retail business hours on holidays in Saskatchewan, Alberta, British Columbia, Yukon, Northwest Territories, and Nunavut. All types of retail businesses in these jurisdictions are permitted to operate on public holidays.

Retail businesses are required to be closed on public holidays in Central and Eastern Canada. This includes Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador. Exemptions are provided in these provinces based on the type of business, the number of employees, or the size of the business. Quebec permits area exemptions for tourism reasons that are determined by the provincial government. In New Brunswick, municipalities are permitted to set retail business hours on holidays under the *New Brunswick Municipalities Act*.

In Ontario, the *RBHA* currently permits fifteen categories of retail business to remain open on holidays including: small pharmacies, smaller stores, stores of convenience, and art galleries are a few examples. In addition, the *RBHA* enables Ontario municipalities to pass By-laws permitting all or some retail businesses to open on holidays if they meet certain criteria that relate to supporting tourism.

Some jurisdictions in Ontario have passed By-laws to permit retail businesses to open on various public holidays following an application process and review set out by the *RBHA*. Any exemption granted can be appealed to the Ontario Municipal Board. Most municipalities with an application process charge fees and they can range from \$200 (in Windsor) to \$3,200 (in Brampton and Mississauga).

## Research on Retail Sector Landscape

As part of stakeholder input, staff reviewed research on the size of retail sector and its economic impact on the City of Toronto. This section will share findings on the consumer habits and changes in business practices.

### *Employment in Retail Sector and Economic Impact*

The retail sector is an important economic sector for the City. The retail sector according to the Toronto Employment Survey (TES) employed more than 331,000 people, representing 23% of all jobs in Toronto. Part-time positions accounted for approximately 48% of all retail sector jobs. The Holiday Shopping By-law impacts almost 136,000 employees or approximately 41% of all retail jobs and 9% of all jobs based in the City of Toronto.

A Conference Board of Canada report indicates that approximately 42% of all Ontario retail sales, or \$77 billion, occurred in the Toronto Region (CMA) in 2015, which is almost 15% of Canadian retail sales. The value of retail sales generated in the Toronto Region was 5.2% higher in 2015 than in 2014.

### *Changes in Retail Business*

As stated previously, a major transformation occurring in the industry is the blurring of lines between grocery, pharmacy and convenience store retailers. Pharmacies have expanded their product offerings to include fresh produce and are directly competing with convenience stores and grocery stores. In addition, most grocery stores and pharmacies now sell "prepared meals" such as pizzas, sushi, rotisserie chicken which has further complicated previous assumptions.

### **Stakeholder Engagement**

City staff engaged various stakeholders for feedback on the current Holiday Shopping By-law including labour representatives from the Worker's Action Centre, Labour Council of Toronto and York Region, United Food and Commercial Workers Canada (UFCW) and Unifor. Responses received from labour representatives indicated that they were opposed to any changes that would allow retailers to open on holidays. They are concerned about the impact that loosening holiday shopping restrictions may have on retail workers who have precarious employment and may feel obligated or forced to work on public holidays.

Business representatives were also engaged in the review including Cadillac Fairview, Oxford Properties, Retail Council of Canada, and the Canadian Federation of Independent Grocers. These groups largely supported a repeal of the By-law, indicating a concern about a lack of a level playing field for business.

In addition, we heard from individual small business operators who identified concerns that the By-law limited businesses that serve diverse communities from operating on public holidays and catering to the dietary, ceremonial and religious needs of the community.

Non-exempted major retail shops have expressed concerns that several major malls in York Region and Vaughan have been granted By-law exemptions and are permitted to operate on public holidays, resulting in a loss of customers by the major malls in Toronto not eligible for exemptions. These major malls, namely (CF Fairview, CF Shops at Don Mills, Scarborough Town Centre, CF Sherway Gardens, and Yorkdale Shopping Centre) have requested that the City examine modernizing the By-law to expand the exemptions to include them, citing the potential economic impact and the need to remain competitive with other major malls in surrounding municipalities.

Staff also heard from convenience store owners represented by the Ontario Convenience Workers Association, indicating they oppose any expansion of the exemptions. Their members are currently permitted to operate on public holidays and are concerned about a significant lost in revenue if larger retail businesses are allowed to operate on public holidays.

Business Improvement Area representatives including the Toronto Association of Business Improvement Areas (TABIA) were also consulted. TABIA, which represents the 82 BIAs within the City of Toronto, has requested that all BIAs be exempted from the By-law, enabling them to operate on public holidays. TABIA is concerned that the current restrictions on holiday shopping are unfairly disadvantaging Toronto's BIAs. The current By-law permits exemptions to a few BIAs such as: Queens Quay West,

Downtown Yonge Street, Bloor-Yorkville Business Improvement Area, and Distillery Historic District.

**Recommendations and Next Steps**

In light of changing business practices of retailers, with some grocery stores and pharmacies now selling food that may be considered a prepared meal, staff are recommending a review, including public consultations on the impact of expanding the application of the prepared meals exemption in the Holiday Shopping By-law to beyond restaurants so as to permit other retailers such as grocery stores who sell prepared meals to operate on public holidays. As part of the consultation, staff will seek input on the application of the prepared meals exemption for grocery stores (e.g. operating hours, partial closure, number of employees, etc.). This would be a change to the existing application of the By-law and therefore staff are recommending consulting the public and stakeholders and to report back on the outcomes of the consultations by October 2017.

Furthermore, staff have heard from stakeholders that current exemptions in the By-law do not create a level playing field for businesses and have not kept pace with the changing nature of retail business. This report requests City Council to direct staff to undertake public consultations on the existing exemptions to the By-law, such as those for small retail business establishments and pharmacies, to ensure clarity and relevance. Lastly, based upon stakeholder input, staff are also recommending a review of other exemptions such as the tourist area exemption to permit Business Improvement Areas and major malls such as, CF Fairview, CF Shops at Don Mills, Scarborough Town Centre, CF Sherway Gardens, and Yorkdale Shopping Centre to be permitted to operate on public holidays. In addition, this report recommends public consultations on the development of an application process similar to other jurisdictions that will enable retailers to request an exemption from the Holiday Shopping By-law.

Together, Municipal Licensing and Standards and Economic Development and Culture will organize comprehensive consultations with residents, workers, and businesses and compile the feedback in a report. In addition, both divisions will make available on the project website a feedback form for the public and businesses unable to attend the consultations.

Table 1 below outlines key public consultation timelines, including a summary of tasks and objectives. The results of the public consultations and stakeholder engagement will be presented to City Council along with any proposed amendments by October 2017.

**Table 1: Public Consultation Timeline:**

TASKS	OBJECTIVES	TIMELINE
Planning	<ul style="list-style-type: none"> <li>• Notifying stakeholders of consultation dates.</li> <li>• Consultation planning and coordination.</li> <li>• Preparation of consultation material and communications.</li> </ul>	April & May 2017



TASKS	OBJECTIVES	TIMELINE
Public Consultation and Stakeholder Engagement  Report Writing	<ul style="list-style-type: none"> <li>• Collect public and stakeholder feedback.</li> <li>• Analyze feedback and begin report writing.</li> </ul>	June to September 2017
Licensing and Standards Committee  City Council	<ul style="list-style-type: none"> <li>• Report on consultation findings and present any necessary proposed amendments to Chapter 510, Holiday Shopping By-law.</li> </ul>	October 2017

## CONTACT

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## SIGNATURE

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